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Security Council

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Implementation of resolution 2357 (2017)

Report of the Secretary-General

I. Introduction

1. The illicit flow of arms and related materiel into or out of Libya continues to be of regional and international concern. Recognizing this threat to international peace and security, the Security Council has adopted measures, in particular the sanctions regime under resolution 1970 (2011), which imposes an arms embargo on Libya, to address the situation. Against this backdrop, the Council authorized, in its resolution 2292 (2016), the inspection by Member States, acting nationally or through regional organizations, with appropriate consultations with the Government of National Accord, on the high seas off the coast of Libya, of vessels bound for or from Libya for which there are reasonable grounds to believe that they are carrying arms or related materiel. Under the resolution, Member States that are conducting such inspections, acting nationally or through regional organizations, are also authorized, upon discovery of prohibited items, to seize and dispose of the items and to collect evidence directly related to the carriage of such items during such inspections.[1]

2. In renewing the authorizations contained in resolution 2292 (2016) for a further 12 months, the Security Council, in its resolution 2357 (2017), also requested the Secretary-General to provide a report on the implementation of the resolution. The present report, submitted in fulfilment of that request, was informed by consultations with and input received from Member States, regional organizations, the Panel of Experts on Libya and the United Nations system, including the United Nations Support Mission in Libya.

3. The authorizations provided by the Security Council for inspections on the high seas off the coast of Libya constitute an important part of its ongoing efforts to reinforce the implementation of its arms embargo adopted through resolution 1970 (2011). Since 2011, the Council has maintained a two-way arms embargo on Libya to prevent the proliferation of arms in the region, contribute to the prevention of violence against civilians in the country, support the Libyan political transition and assist the Government of National Accord in establishing unified national forces that could ensure security and defend Libya against terrorism. The arms embargo is itself an essential component of the Council's sanctions regime relating to Libya, which also

[1] For the first reference by the Security Council to inspections on the high seas in relation to Libya, see paragraph 13 of resolution 1973 (2011). For reference to the termination of this provision, see paragraph 8 of resolution 2040 (2012).

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includes a travel ban, an asset freeze and measures aimed at preventing the illicit export of petroleum, including crude oil and refined petroleum products, from Libya. The Council has adapted the exceptions to and the exemptions provisions of the arms embargo during the past seven years in response to developments in Libya.[2]

4. In order to facilitate the implementation of the arms embargo, prior to its adoption of resolution 2292 (2016), the Security Council, in paragraph 11 of its resolution 1970 (2011), had already called upon Member States to conduct inspections of cargo in their territories that was heading to and coming from Libya. That included inspections at airports and seaports, if the Member State had information that provided reasonable grounds to believe that the cargo contained prohibited items. The Council also authorized the seizure and disposal of any prohibited items that had been discovered during the inspections. In 2014 and 2015, in paragraph 9 of resolution 2174 (2014) and in paragraph 19 of resolution 2213 (2015), the Council again called upon Member States to conduct such inspections in their territories.

5. Moreover, and outside the scope of the arms embargo but still pertaining to Libya, the Security Council also mandated the inspection on the high seas of vessels in other circumstances. Through resolution 2362 (2017), for example, an inspection regime was authorized to prevent illicit exports of petroleum from Libya and, until 15 November 2018, the inspection was also authorized on the high seas of vessels designated by the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya. As another example, resolution 2380 (2017) was aimed at combating migrant smuggling and trafficking in persons, and until 5 October 2018, inspection was authorized of vessels suspected of being used for such acts on the high seas off the coast of Libya (see S/2016/766 and S/2017/761 for reports of the Secretary-General submitted in this regard).

6. The arms embargo and the subsequent inspection regime on the high seas are strong reflections of the Security Council's resolve to address the smuggling of arms to and from Libya that has occurred since 2011. Member States, the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya,[3]

[2] For more information, including on existing exceptions and exemptions and on the reporting of attempted or actual violations of the embargo, see Implementation Assistance Notice No. 2 of 11 September 2014 and No. 3 of 18 August 2016 issued by the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya, available from www.un.org/sc/suborg/en/sanctions/1970/implementation-assistance.

[3] In 2012, the Committee reported to the Security Council that it had initiated inquiries into reports of alleged proliferation of weapons by sea from Libya (S/2012/983). Two Member States reported to the Committee, in 2013 and 2014, on their discovery of illicit arms and related materiel destined for Libya following the inspection of cargo, at their respective seaports or inside their territorial waters, on board three vessels (see S/PV.6981 and S/2014/909 and S/2014/106 and S/2015/128). The most recent such case concerned a fourth vessel, which was inspected in January 2018 (see S/PV.8211).

regional organizations[4] and the Panel of Experts[5] have all reported on illicit transfers of arms and related materiel to and from Libya. Those transfers have involved State and non-State actors, including foreign and Libyan armed groups, and criminal entities. In addition, the illicit flow of arms from Libya has enabled terrorist groups to expand their influence in the region.[6]

II. Implementation of the authorizations set out in resolution 2292 (2016) and extended in resolution 2357 (2017)

7. The European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) has been the only regional arrangement acting under the above-mentioned authorizations. Since June 2016, through the operation, more than 1,200 hailings, more than 70 friendly approaches and three vessel inspections have been conducted, leading to two seizures of prohibited items. Since June 2017, there have been no reports of the military operation detecting arms smuggling activity in international waters.

8. In a letter dated 9 April 2018 from the Chargé d'affaires a.i. of the Permanent Mission of Libya to the United Nations addressed to the Secretariat, the Government of National Accord informed the Secretariat that it was cooperating with the military operation to monitor and respond to potential violations of the arms embargo. It also expressed its firm commitment to maintaining security and stability in Libya and the region and stated that, in the sensitive circumstances, it supported a further extension of the above-mentioned authorizations.

9. No further information has been brought to the attention of the Secretariat regarding additional inspections of vessels or seizures of cargo by Member States, acting nationally or through regional organizations, on the high seas off the coast of Libya. The North Atlantic Treaty Organization (NATO) has informed the Secretariat that, since July 2017, it has agreed to support, if needed and as necessary, the efforts of the European Union to implement Security Council resolution 2357 (2017) within the framework of Operation Sea Guardian of NATO.

Inspections: *Med Prodigy* and *El Mukhtar*

10. Providing input for the present report, the military operation informed the Secretariat that it had conducted three vessel inspections pursuant to paragraphs 3 and 4 of Security Council resolution 2292 (2016). On 14 September 2016, it inspected the *Med Prodigy*, which was apparently bound for Misratah. The military operation reported that good-faith efforts had been made to first obtain the consent of the flag

[4] The European Union military operation in the Southern Central Mediterranean discovered illicit arms and related materiel on the high seas off the coast of Libya in May and June 2017. According to that military operation, while a marginal intra-theatre arms transfer is believed to have occurred in Libyan territorial waters, there is little evidence to suggest any inter-theatre transfers since its most recent inspection, in June 2017. The Panel of Experts has advised, however, that there is a possibility of arms being smuggled into Libya through the use of sea routes that avoid international waters altogether.

[5] Since its establishment in 2011, the Panel of Experts has reported on arms smuggling activity by sea among Libya, neighbouring countries, Europe and the Middle East, fuelling regional conflicts, insecurity and terrorism. In its most recent report (S/2017/466), the Panel drew attention to the transfer by sea, in April 2016, of armoured vehicles to Libya that had not been intended for the Government of National Accord and hence not falling under the exception to the arms embargo. The Panel also pointed to transfers by sea, in January and April 2017, respectively, of other vehicles that it believed could be categorized as non-lethal military equipment that had not been intended for the Government of National Accord.

[6] For more information, see S/2017/466 (para. 171; annex 44) and S/2017/573 (para. 9).

State, but no reply had been forthcoming in the specified four-hour time limit and, therefore, the inspection went ahead. The second and third inspections involved the *El Mukhtar*, which, on 1 May and 19 June 2017, was heading from Misratah to Benghazi. On both occasions, the vessel was inspected with the consent of Libya, which, at the time,[7] was believed to be the flag State. Those inspections involved multiple interactions, both formal and informal, with points of contact in the Libyan coastguard. According to the military operation, the crews of both vessels were cooperative during the inspections. Whereas no arms or related materiel were found aboard the *Med Prodigy*, items prohibited under the arms embargo were seized during the inspections of the *El Mukhtar*.

11. In addition, five friendly approaches were conducted between November 2016 and March 2017 in relation to the Libyan-flagged fishing vessel *Lufy*, travelling between Misratah and Benghazi. The military operation determined that the vessel enjoyed sovereign immunity under international law because it was chartered by forces under the control of the Government of National Accord for humanitarian purposes, namely the transport of wounded fighters, with arms present on board for self-defence.

Seizure and disposal of prohibited items and collection of evidence

12. In accordance with paragraph 5 of Security Council resolution 2292 (2016), the military operation reported that, following the first inspection of the *El Mukhtar*, the seized items were transferred to the *FGS Rhein*, a German naval vessel that was part of the military operation that had conducted the inspection. Two arms-related items, a rocket-propelled grenade launcher and a rocket-propelled grenade, were immediately destroyed by the *FGS Rhein* for security reasons. The remaining items (arms, ammunition and explosives) were later stored in a naval warehouse in Cava di Sorciano, Italy, on 5 June 2017. The Panel of Experts inspected the stored items in September 2017 and is expected to reflect on its findings in its next report.

13. Following the second inspection of the *El Mukhtar*, the seized arms and ammunition were immediately destroyed for security reasons by the *FS Commandant Blaison*, a French naval vessel operating under the operation. The Panel of Experts informed the Secretariat that it had been unable to inspect the items and that the list of the items provided to the Panel was not sufficiently detailed to facilitate its investigations into the origin of the items.

Reporting obligations and sharing of relevant information

14. Under the provisions of paragraph 11 of resolution 2292 (2016), Member States and the Government of National Accord were encouraged to share relevant information with the Committee and with those Member States and regional organizations acting under the authorizations set out in resolution 2292 (2016). In that regard, in addition to having submitted reports to the Committee on the two vessels inspected pursuant to paragraph 10 of resolution 2292 (2016), the military operation also briefed the members of the Council on its activities in an informal interactive dialogue held on 31 May 2017. The military operation also informed the Secretariat that it had continued to gather information through the issuance of requests for information to States members of the European Union and various entities. In addition, the Panel of Experts informed the Secretariat that it had been in communication with the Office of the Commander of the operation.

[7] It was later discovered that the *El Mukhtar* had been flying the flag of another Member State, a matter currently under investigation by that Member State.

III. Observations

15. I commend the efforts of the military operation to deter the smuggling of illicit arms and related materiel to or from Libya by sea. I also welcome the cooperation extended to it by the Government of National Accord, with a view to implementing the arms embargo. I encourage the Government of National Accord to further explore measures to strengthen the point-of-contact system in the Libyan coastguard.

16. In connection with the authorization to inspect suspect vessels on the high seas off the coast of Libya, I should like to recall the stipulations contained in Security Council resolution 2292 (2016) relating to, inter alia, making good-faith efforts to first obtain the consent of the vessel's flag State, acting in full compliance with international law and international human rights law, as applicable, doing so without causing undue delay or interference with the exercise of freedom of navigation and avoiding causing harm to the maritime environment or the safety of navigation.

17. In order to complement the efforts of the military operation, I also encourage Member States, in their territorial waters or at their seaports, to inspect cargo to and from Libya, in line with relevant Security Council resolutions. Those endeavours should also be complemented by the provision of support for training and capacity-building needs, as identified by the Government of National Accord for its coastguard and its port and customs authorities.

18. In the seven years since the Security Council imposed the arms embargo in relation to Libya, implementation continues to encounter challenges. I echo the calls made by members of the Council to fully implement the embargo measures, which remain of critical importance to the protection of civilians and the restoration of security and stability in Libya and the region. In that connection, it would be important to deepen knowledge, reporting and data collection on arms trafficking routes, patterns and the profiling of traffickers off the coast of Libya, which is essential to better understanding the full extent of illicit trafficking in the region and its links to terrorism. To that end, while there may be legitimate considerations for the immediate disposal of items seized during an inspection, it is important that detailed records of seized items be maintained and that the Panel of Experts be afforded the opportunity to have access to those records. Whether an inspection is undertaken on the high seas off the coast of Libya or inside territorial waters, I also encourage Member States that discover prohibited items to invite the Panel to inspect, document and analyse the items before any destruction thereof. For its part, the Panel may wish to inform its interlocutors of the type of information that it requires in order to advance its investigations into potential violations of the embargo.